offence charged, the accused is asked whether he admits such facts. If he does admit, then the court records the plea and proceeds to consider the question of sentence. Once the accused is sentenced then the plea ranks as a conviction. (See *R.* v. *Cole*,[4]). The plea must be an unequivocal plea of guilty. It is important that there should be no ambiguity in the plea. If there are elements in the case which indicate that the accused is really trying to plead not guilty or, as Lord Goddard put it, "Guilty, but . . .", then the court has, in my view, no discretion but to record a plea of Not Guilty. [(See *R.* v. *Durham Quarter Sessions, ex parte Virgo* [5])].

If those principles are applied to the present case the answer seems very clear. The experienced president obviously through the interpreter read and explained the charge to the appellants who clearly understood it. They freely and voluntarily confessed that they were guilty of the offence of which they were charged. They understood the nature and consequences of their pleas. The facts tendered by the prosecution can be briefly stated: the appellants overtook the said lorry in a stolen taxi along the Bentong-Kuala Lumpur road and after a short distance blocked its passage and forced it to stop. Three Chinese rushed out of the said taxi and held up their victims at gun-point. The other Chinese remained at the wheel of the said taxi. Their victims were gagged, bound, and herded into a ravine and were guarded by two of the three Chinese, while the third drove away the lorry with its valuable cargo. The stolen taxi was also driven away and later abandoned. This was obviously not a one-man job and the facts clearly indicate that the appellants had a prearranged plan to commit the offence of which they were charged. They were men of mature years and they clearly admitted having committed the crime actually committed. In my judgment their pleas were unequivocal pleas of guilty made in open court to facts which amounted to pleas of guilty in law. The appeal against conviction is dismissed.

The sentence is unduly benevolent to the appellants. The appeal against sentence is also dismissed.

Appeals dismissed.

CHIN LOKE v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi C.J. (Malaya)) May 9, 1967]

[K.L. — Criminal Appeal No. 13 of 1967]

Road Traffic — Dangerous driving — Deaths caused by — Findings of fact — Road Traffic Ordinance, 1958, s. 34A(1).

Criminal Procedure — Fine — Imposition of — Where accused not in financial position to pay — Alternative sentence of imprisonment.

In this case a motor car and a lorry going in opposite directions collided with the result that the lorry with a heavy load of road metal fell over the car and practically crushed one side of it and killed four passengers in the car. Three passengers who survived the accident gave evidence and the learned president convicted the appellant (lorry driver) for driving his lorry in a manner dangerous to the public under section 34A(1) of the Road Traffic Ordinance. He imposed a fine of $3,000. On appeal,

Held: (1) there was no reason for the court to interfere with the finding of facts made by the learned president;

(2) in principle a court should not impose a fine which it knew or ought to have known that the accused was not in a financial position to pay. In this case the alternative to the fine would be a sentence of a term of years of imprisonment. The sentence of fine set aside and the appellant sentenced to one year's imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

Peter Mooney for the appellant.

Zaiton binte Othman (Deputy Public Prosecutor) for the respondent.

Azmi C.J. (Malaya): This is an appeal against the judgment of the President of the Sessions Court at Kuala Lumpur convicting the appellant on a charge of driving his motor lorry in a manner dangerous to the public, and thereby causing the death of four persons, an offence punishable under section 34A(1) of the Road Traffic Ordinance, 1958.

The appellant also appealed against the fine of $3,000 imposed by the learned president.

The facts for the prosecution may be summarised as follows: A motor car and a motor lorry going in opposite directions collided with the result that the lorry with a heavy load of road metal fell over the car and practically crashed one side of it and killed four passengers in the car. Three passengers who survived the terrible accident gave evidence for the prosecution.

According to the surviving passengers in the car there were seven of them in the car. Sitting in front and with the driver who was killed were Chan Wah Yok, P.W.4, and Sevvamanar d/o Rasiah, P.W.11 and Lalita d/o Natarajah P.W.2.

Lalita P.W.2 aged 11, could only say that a lorry was coming from the opposite direction and the next thing she knew she was in hospital.

Chan Wah Yoke, P.W. 4, a girl of 17 could only say the car met with an accident and nothing more, though she could remember sitting in front with the driver and an another woman and that they were going to Tanjong Malim to see the country.

P.W.11 Sevvamanar, a girl of 18 said that they were going to Tanjong Malim to see the country. She said that the car was driven at a moderate speed but there was no suggestion by anyone in the car to see the dredge. She remembered seeing a dredge though she could not remember anything else in reference to the accident.

The prosecution called four witnesses who said they saw the accident namely, P.W.3 Suppiah, P.W.6, Balasundramaniam, P.W.12 Perian and P.W.13 Arumugam.

P.W.3 Suppiah aged 36, a gardener at Wilkinson Process Factory said that he was near the drain of the road at about 9.15 a.m. when he saw a car coming from Kuala Lumpur going at a moderate speed on its proper side of the road. Then he saw a lorry coming from the opposite direction very fast going in a zig-zag manner then turned to his right and collided with the car. It then pushed the car and fell on it. When this happened the vehicles were on the grass verge.

In cross-examination, P.W.3 admitted that the signature on a certain document was his, the learned president marked the document as Exhibit D.7, but apparently apart from identification of his signature the defence did not ask this witness any other question. But in re-examination this witness stated that he made a statement to the police after his statement in Exhibit D.7. It is not very clear to me whether Exhibit D.7 was admitted at all. In any case when asked by the prosecution as to whether he saw the lorry before the collision witness insisted that he did. He insisted that the evidence he gave in the court was the truth.

In cross-examination he also said that there was a dredge as shown in photograph P.2 and that a lot of people stopped to watch the dredge in operation from the side of the road but this car did not go across to the other side of the road and then turn back to its left side.

P.W.6 Balasundramaniam, a labourer aged 24, stated that he got off a bus on the morning of the incident about 9.15 a.m. on his way to work at a factory known as Wilkinson Process.

According to him as he got down the bus he heard a loud noise like thunder ahead of him about 50 to 65 feet away on his left side as he was facing Batu Cave which was the direction the car was going. He then went to the scene and saw a lorry on the top of a car. He assisted to carry out the passengers in the car. Then the lorry was shifted away to enable the occupants of the car to be taken out of the car. He identified the appellant as the driver of the lorry.

P.W.12 Perian, another labourer of the factory aged 45. This witness stated that about 9.15 a.m. he was at a coffee shop at the 6½ milestone Kuala Lumpur/Batu Caves road. After having some drink at the stall he was going back to his place of work when he saw a lorry coming from the direction of Batu Caves. He stated the noise of the lorry as being more than average noise produced by lorries. The lorry was making a terrific noise and wavering along the road. He then saw a car coming from the direction of Kuala Lumpur at the normal speed and on its proper side of the road. He then went on to say that just in front of him the lorry wavered and then dashed against the car. Both vehicles were in motion. The collision in front of him took place on the left side of the road facing Batu Caves and the lorry after collision overturned on the car and came to a halt. The stones which the lorry was carrying were spilt on the road as well as on the grass. The lorry overturned on its near side. He also said that the car was proceeding normally with no indication that it would stop or turn to its right before the accident. In cross-examination he said that he was first attracted by the noise made by the lorry when it was still behind him.

P.W.13 Arumugam, 29 years old, an attendant at the Batu Caves Mine dispensary. According to him he was at about 9.15 a.m. at the 6½ milestone Kuala Lumpur/Batu Caves road. At first he said "I heard a sound as if two heavy objects had collided. I went to have a look." Then he went on to say "I saw a lorry had collided with a car and pushing it to the grass. The car was on the left hand side of the road facing Ipoh. The lorry was going to Kuala Lumpur from Ipoh. As the lorry was pushing car it turned over the car on front portion of car." He also said that at time of collision lorry was on the road but it crossed the white line and collided with car on the car side of the road. Now in cross-examination he said "When I first saw the vehicles the lorry was stuck to the car and pushing car to the grass. The front of the car was facing grass verge and being pushed along by the lorry." In answer to the question put by the court he apparently persisted that he actually saw the lorry pushing the car on the grass after the collision immediately after the sound.

That is the case for the prosecution.

According to the appellant, the driver of the lorry, he saw the car coming when it was about 60 to 70 yards away. When the car was about 20 to 30 yards away it turned to its right i.e. the side of the road to have a look at the dredge which was on that side of the road (i.e. the lorry side of the road). He therefore, swerved to the middle of the road to avoid the car which was on his path and about to stop. Then the car to use his own words "saw my lorry and swerved back to its side of the road. By this time it was 10 yards from me." Then the car collided with the front side of his lorry and when this happened his lorry was in the middle of the road. He said that his lorry was travelling at 31 miles per hour.

In answer to cross-examination he said he was driving heavy lorries for more than 2 years. It was suggested to him that since he was paid by the trips he would make more money if he made more trips and I suppose from that fact

he must be travelling fast. He also stated that he did not apply his brakes when he saw the car turning back to its side of the road, but merely reduced the speed by not accelerating. He admitted that if he had applied the brakes when he was about 10 yards from the car he might have avoided the collision. Perhaps in view of the heavy load of the lorry and other factors this would appear to be doubtful. He also admitted he did not sound his horn.

Next witness Ben Tan D.W.2, an insurance loss adjuster said that he investigated this incident and took some photographs of the scene — D.8 and D.9, and also D.13A — K. This witness purported to produce a statement taken by another investigator Mr. L. P. George and this statement was supposed to be a statement made by a witness P.W.3.

Mr. Mooney for the appellant put up to me again the defence version of the story which was urged before the trial president, namely, that the car went to the other side of the road to see the dredge and when it saw the lorry coming, returned to its own side. But in the meantime the lorry having seen the car move to his side of the road swerved to the right with the result that they collided about the center of the road.

Mr. Mooney also attacked the evidence of the three girls. He argued that these girls were not really suffering from amnesia but deliberately refused to tell the trial court the true version of the incident because the true version would be in favour of the appellant. He also said that there was no medical evidence to support the allegation of amnesia.

On this question of alleged amnesia, it is true that the two older girls said they could not remember what happened and from that statement the learned president himself thought that they must have suffered from amnesia. He, however, believed that. I do not see any reason why I should disagree with him. The girls were very young and the horrible incident which nearly killed them could easily have caused amnesia.

Mr. Mooney also attacked the evidence of the three Indian witnesses who were at the scene. All these points brought by him were argued at the trial and considered by the trial president. I agree there are discrepancies and some contradictions. The learned president however, expressed the view that these witnesses were witnesses of truth notwithstanding the discrepancies and contradictions. He came to the conclusion that the lorry went to the side of the car, pushed it to the side of the road and then fell over it.

With reference to the defence story, the learned president was of the view that it could not reasonably be true. He also held the view that even if the driver's story was true, he did not think that the driver was justified in going to his wrong side of the road in an attempt to avoid collision.

The learned president held that the appellant was driving much faster than 31 miles per hour and that he must have lost control of his vehicle when taking the bend at such a great speed. He also found that the driver of the car must have tried to avoid the lorry by swerving further to his left side to the grass verge and that the collision took place there.

In my view this appeal revolves substantially on questions of fact and credibility of witnesses. In my view I see no reason why I should interfere with the finding of facts made by the learned president. I would therefore dismiss the appeal against conviction.

With reference to the appeal against sentence, it is true that in principle a court should not impose a fine which it knew or ought to have known that the accused was not in a financial position to pay. In this case, however, in my view the alternative to this fine would be a sentence of a term of years of imprisonment. After all four lives have been lost as a result of this offence. I would therefore set aside the sentence of fine and order that the appellant be sentenced to a year's imprisonment with effect from the day he was brought to the court.

Appeal dismissed.

Solicitors; *Skrine & Co.*

PEOPLE'S INSURANCE CO. OF MALAYA LTD. v. HO AH KUM & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Buttrose J.) May 31, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 19 of 1967]

Insurance — Third-party risks and compensation — Whether driving on order or with permission of insured — Pleadings — Motor Vehicles (3rd Party Risks and Compensation) Ordinance, 1960, s. 8.

Practice and Procedure — Pleadings — Defence — Appeal on matter not raised at trial — Not allowed.

This was an appeal from the judgment of Kulasekaram J. in an action brought by the respondents to recover the sum of $31,500 and costs from the appellants under section 8 of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960 obtained against one Foo. The claim against Foo was made by the respondents as administratrices of the estate of one Wan deceased who was killed as a result of the negligent driving of the said Foo. They alleged that at the time of the accident Foo was driving the motor van on the order or alternatively with the permission of one Yeo to whom a policy of insurance had been issued by the appellants under which policy the appellants agreed to insure Yeo and any other person driving on Yeo's order or with his permision in respect of any liability at law. The appellants in their defence denied that Foo, at the time